

September 4, 2009

Dear Owner/Operator:

Enclosed please find Ulster County Local Law No. 1 of 2009, *A Local Law Requiring Chain Food Service Operators To Post Calorie Information On Menus*. This law was adopted by the Ulster County Legislature on April 7, 2009 and takes effect October 5, 2009. Pursuant to this law, chain food establishments shall post on menu boards, menus and food display tags the calorie content values (in kcal) for each menu item. Also enclosed is *Frequently Asked Questions About Ulster County Local Law No. 1 of 2009*, which should assist you in complying with this local law.

For additional information, please contact Cory Kassler, Public Health Sanitarian at the Ulster County Health Department at (845) 340-3036.

Sincerely,

Nereida Veytia, RN, MSN
Acting Public Health Director

NV:CM
Enclosure

Frequently Asked Questions About Ulster County Local Law No. 1 of 2009

Local Law No. 1 of 2009 - A Local Law Requiring Chain Food Service Operators To Post Calorie Information on Menus

1. **Question:** What is the effective date of the Local Law No. 1 of 2009?

Answer: Local Law No. 1 of 2009 becomes effective October 5, 2009.

2. **Question:** Where can I get a copy of Local Law No. 1 of 2009 and the Frequently Asked Questions?

Answer: Currently, Local Law No. 1 of 2009 can be found at <http://www.co.ulster.ny.us/resolution-archives/2009/LL%20No.%201%20of%202009.pdf> and Frequently Asked Questions About Ulster County at <http://www.co.ulster.ny.us/health/enviro.html>

3. **Question:** Can a food service establishment use a separate drive-through stanchion containing the name of each item offered and its calorie content adjacent to the menu board and in close proximity to the menu and drive-through window?

Answer: Yes. The stanchion must be clearly visible and in close proximity to the menu and drive-through window. Should a food service establishment choose to place a stanchion next to a menu board, the operator of the food service establishment must obtain written approval from the Ulster County Health Department Environmental Sanitation Division prior to its placement. *

* The placement and construction of any stanchion/menu board shall be subject to all local municipal building, zoning, and other applicable laws, rules and regulations. It is the responsibility of the food service establishment to ensure its compliance with same.

4. **Question:** Does a food service establishment need to inform the Health Department of the placement, replacement or relocation of menu boards?

Answer: Yes. During the permit process of any existing food service establishment or any new construction of a food service establishment the operator must submit a plan for approval by the Ulster County Health Department Environmental Sanitation Division prior to its construction. Additionally, any renovation or alteration to an existing food service establishment including the placement of a menu board, which does not take place during the permit process, must receive prior written approval from the Ulster County Health Department Environmental Sanitation Division.

5. **Question:** Are marketing materials, including posters and/or banners, exempt from the calorie posting requirements in Local Law No. 1 of 2009?

Answer: Yes. Marketing materials are exempt provided they do not contain a menu item along with the price.

6. **Question:** Are there any exemptions for items on the menu for a limited time, e.g. less than 90 days?

Answer: No. If the product is listed on the menu, menu board or food display tag, the calorie content must be listed.

7. **Question:** Are condiments and dipping sauces exempt under the current legislation?

Answer: No. As per Local Law No. 1 of 2009, Section 1, Item B, "For Menu items that come in different flavors and varieties but that are listed as a single menu item, such as, but not limited to, soft drinks, ice cream, pizza and doughnuts, the median value for calories for all flavors or varieties shall be listed on menus and menu boards if the calorie values for all flavors or varieties are within 20% of the median."

8. **Question:** In addition to calorie content, what additional nutritional information are food service establishments required to provide?

Answer: Pursuant to Local Law No. 1 of 2009, food service establishments are only required to provide calorie content values.

9. **Question:** Can a food service establishment post calories per serving if it is selling buckets of chicken or whole pizzas?

Answer: Calorie information must be posted for the entire menu item e.g., a bucket of chicken must list the calories for the entire bucket.

10. **Question:** Who can we contact for additional information and/or to review our menu board plans?

Answer: All questions can be directed to Cory Kassler, Public Health Sanitarian at the Ulster County Department of Health at (845) 340-3036 Monday - Friday 9 a.m. - 5 p.m.

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BE IT ENACTED, by the Legislature of the County of Ulster, as follows:

SECTION 1. TITLE - “THE ULSTER COUNTY MENU LABELING ACT.”

SECTION 2. LEGISLATIVE FINDINGS.

SECTION 3. DEFINITIONS.

SECTION 4. ENFORCEMENT AND PENALTIES.

SECTION 5. SEVERABILITY.

SECTION 6. EFFECTIVE DATE.

SECTION 1. THIS LAW SHALL BE KNOWN AS THE ULSTER COUNTY MENU LABELING ACT OF 2009.

A. Calorie information for menu items. Chain food service establishments shall post on menu boards, menus, and food display tags the calorie content values (in kcal) for each menu item next to the listing of each menu item.

(1) Menu boards and menus. The term “calories “ or “cal” shall appear as a heading above a column listing the calorie content value of each menu item, or directly adjacent to the calorie content value for each menu item.

(i) Menu boards. On menu boards, calorie content values shall be legible, posted clearly and conspicuously, and displayed in a color as or more prominent than the color in which the name of the menu item or price of the menu item are displayed. Calorie content values shall also be posted in a size and typeface at least as large as the name of the menu item or price, whichever is larger.

(ii) Menus. On printed menus, calorie content values shall be legible, printed conspicuously, and displayed in a color as or more prominent than the color in which the name of the menu item or price of the menu item are displayed. Calorie content values shall also be printed

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in a size and typeface at least as large as the name or price of the menu item.

(iii) Food display tags. If a restaurant or similar retail food establishment provides a salad bar, buffet line, cafeteria service, food display case, or arrangement where food is on display, it must provide calories per standard item next to where the item is offered in a size and typeface that is prominent and legible from where customers are choosing those items.

B. For menu items that come in different flavors and varieties but that are listed as a single menu item, such as, but not limited to, soft drinks, ice cream, pizza, and doughnuts, the median value for calories for all flavors or varieties shall be listed on menus and menu boards if the calorie values for all flavors or varieties are within 20% of the median. If the calorie values are not within 20% of the median, then the range for all the flavors or varieties of that menu item shall be listed from the lowest to the highest value. If a menu item that comes in different varieties is on display with a name placard or similar signage, the calories per serving as offered for sale shall be listed on the placard along with the name. If a menu item is not on display, nutrition information for each individual flavor or variety shall be provided in writing at the point of ordering.

C. Chain food service establishment owners or operators shall provide to the Department, if requested, information documenting the accuracy of the calorie labeling required by this section.

D. The Ulster County Board of Health may promulgate rules and regulations as may be necessary to outline parameters and procedures and as may otherwise be necessary to effectuate the purposes of this Act.

SECTION 2. LEGISLATIVE FINDINGS.

The Healthy Eating and Living (*HEAL* Ulster County) initiative was created in 2007 to quantify the severity of childhood obesity in Ulster County schools, and develop initiatives that combat this public health crisis on a local level. In February 2007, Body Mass Index Screening Study was commissioned to help

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determine the scope of childhood obesity in Ulster County. HEAL- Ulster initiated a survey of all school districts in Ulster County to understand the level and type of data collection, and if they would be willing to participate in a Body Mass Index (BMI) screening for grades 1-3.

Participating school nurse, the school's health practitioner or the child's personal physician, recorded data from the 2006-2007 school year. Data was used from 2,105 students; 1,027 first graders and 1,078 second graders. Of the 2,105 children, 2% were underweight, 61.85% were of a healthy weight, 16.58% were at risk of becoming overweight, 19.57% were overweight with 4.75% being extremely overweight. In total, 36.15% of the children (18.48% males, and 17.67% females) or 1 in 3, are overweight or at risk of overweight.

One of the goals for Healthy People 2010 is to "promote health and reduce chronic disease associated with diet and weight" by reducing the proportion of children aged 6-11 who are overweight or obese to 5% (United States Department of Health and Human Services. (Healthy Eating And Living (HEAL) Body Mass Index Screening Study:

<http://www.ulstercountyny.gov/health/UCHDBMIStudyfinal.pdf>)

According to the United States Centers for Disease Control, since the mid-seventies, the prevalence of overweight and obesity has increased sharply for both adults and children. Data from two National Health and Nutrition Examination Surveys show that among adults aged 20 years, the prevalence of obesity increased from 15.0% (in the 19760 survey) to 32.9% (in the 20034 survey). The two surveys also show increases in overweight among children and teens. For children aged 2 years, the prevalence of overweight increased from 5.0% to 13.9%; for those aged 6 years, prevalence increased from 6.5% to 18.8%; and for those aged 12 years, prevalence increased from 5.0% to 17.4%. These increasing rates raise concern because of their implications for Americans health. Being overweight or obese increases the risk of many diseases and health conditions, including the following: hypertension, dyslipidemia (for example, high total cholesterol or high levels of triglycerides), type 2 diabetes, coronary heart disease, stroke, gallbladder disease, osteoarthritis, sleep apnea and respiratory problems, and some cancers (endometrial, breast and colon). A prime cause of

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overweight and obesity is eating too many calories and not getting enough physical activity.

A key recommendation of a recent Food and Drug Administration-sponsored expert group report on obesity and eating away from the home was that, “Away-from-home food establishments should provide consumers with calorie information in a standard format that is easily accessible and easy to use. Participants believe that information should be provided in a manner that is easy for consumers to see and use as part of their purchasing and eating decisions. Information should be provided for any standard menu item offered on a regular and ongoing basis that is prepared from a standardized recipe, whether the item is an entire meal or a meal component.

This law will require chain food service establishments in Ulster County to list the calorie content values of menu items on menus and menu boards. Such information, clearly displayed at the point of decision, will allow consumers in Ulster County to exercise personal responsibility and make informed choices for a growing part of their diets.

SECTION 3. DEFINITIONS.

For purposes of this chapter, the meaning of terms used in this chapter shall be as follows:

A. “Chain Food Service Establishment” is defined as a food service establishment, which is permitted for operation by the Ulster County Department of Health, that is one of a group of 15 or more food service establishment locations in the United States, whether in Ulster County or elsewhere, offering for sale substantially the same menu items, in servings that are standardized for portion size and content, that operate under common ownership or control, or as franchised outlets of a parent business, or do business under the same name.

B. “Department” shall mean the Ulster County Department of Health.

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C. "Menu" shall mean a printed list or pictorial display of food items, and their price(s), that are available for sale from a chain food service establishment and shall include menus distributed or provided outside of the establishment.

D. "Menu Board" shall mean any list or pictorial display of food items and their price(s) posted in and visible within a chain food service establishment or outside of a chain food service establishment for the purpose of ordering, such as from a drive-through window.

E. "Food Display Tag" shall mean a written or printed description of a food or beverage placed in the vicinity of the item, such as a label or placard identifying a type or the price of ice cream, pastry or doughnut.

F. "Menu Item" shall mean any individual food item, or combination of food items, listed or displayed on a menu board, menu or food display tag that is/are sold by a chain food service establishment.

SECTION 4. ENFORCEMENT AND PENALTIES.

A. For the purpose of this Local Law, the term "enforcement officer" shall mean the Ulster County Board of Health, or its designee. The enforcement officer may cause to have issued and served upon the person complained against a written notice, together with a copy of the complaint made against him, which shall specify the provisions of this Local Law of which such person is said to be in violation and a statement of the manner in which that person is said to violate it and shall require the person so complained against to answer the charges of such complaint at a public hearing before the Board of Health or its designated hearing officer at a time not less than fifteen (15) days after the date of service of notice. The Board of Health may serve, together with a copy of complaint, a stipulation offer to the person complained against to enter into a stipulation under the terms and conditions as set forth in the stipulation offer. The person complained against shall have the option of entering into the stipulation or proceeding with a formal hearing.

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- B. If the enforcement officer determines after a hearing that a violation of this Local Law has occurred, a civil penalty may be imposed by the enforcement officer pursuant to Section 6 of this Local Law. Nothing herein shall be construed to prohibit an enforcement officer from commencing a proceeding for injunctive relief to compel compliance with this Local Law.
- C. Any person who desires to register a complaint under this Local Law may do so with any appropriate enforcement officer.
- D. The decision of any hearing officer shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.
- E. The enforcement officer, subsequent to any appeal having been finally determined, may bring an action to recover the civil penalty provided in Part F of this section of this Law.
- F. Any person who violates any provision of this Local Law shall be guilty of a violation, punishable by a civil penalty not to exceed two hundred (\$200) dollars a day.

SECTION 5. SEVERABILITY.

If any word, phrase, clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section of part thereof directly involved in the controversy in which such judgment shall have been rendered.

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SECTION 6. EFFECTIVE DATE.

This Local Law shall take effect one hundred and eighty (180) days after its adoption by the Ulster County Legislature.

Adopted by the County Legislature: April 7, 2009

Approved by the County Executive: April 9, 2009